

LEGAL NATURE AND FEATURES OF APPLICATION GIG CONTRACTS IN UKRAINE

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Abstract: *The article examines the legal nature of the application of gig contracts in Ukraine, addressing the current advantages and challenges of the practical use of this form of collaboration.*

Key words: digital economy; IT-tools; innovation process; innovation system; gig-contract; gig specialist; residents of "Diya City".

Considering the rapid development of the digital economy, globalization and the growth of the use of Internet technologies, the form of work based on gig contracts began to gain popularity in Ukraine, where the use of gig contracts became a common phenomenon with the development of technologies and online platforms. Gig contracts, which are an important component of the so-called flexible economy (also known as the "on-demand economy"), have become an alternative to the traditional form of employment. They allow cooperation under contracts, performing specific tasks or projects.

The Law of Ukraine "On stimulating the development of the digital economy in Ukraine" (hereinafter - Law No. 1667-IX dated 07.15.2021) provides for the introduction of new concepts into the legislation of Ukraine, including "gig contract". Therefore, in accordance with Clause 1 of Article 1 of the Law, a "gig contract" is a civil law contract under which a gig specialist undertakes to perform work and/or provide services in accordance with the tasks of a resident of Diya City as a contractor, and a resident of Diya City undertakes to pay for the work performed and/or services provided and to provide the gig specialist with proper conditions for performing work and/or providing services, as well as social guarantees [1].

A gig contract is a new form of cooperation with specialists that combines labor and civil law relations. Recently, they are increasingly used by IT companies, residents of Diya City, to hire employees for specific projects. A gig contract combines features of an employment contract and a contract for the provision of services. According to Law No. 1667-IX, the contract must be clearly defined as a gig contract. Therefore, such a name is written in the title of the document and in the text. In all other matters, gig contracts are subject to the applicable norms of the Civil Code of Ukraine, concluded according to the standard procedure in writing, and Art. 17 of the Law of Ukraine No. 1667-IX provides the possibility of signing in electronic form, certifying with a qualified electronic signature.

Diya City is a specialized legal and economic zone in Ukraine, focused on the development of digital and technological industries. The "Diya.City" program was introduced with the aim of creating favorable conditions for the activities of companies in the fields of IT, innovative technologies and other digital industries, as well as for attracting investments, supporting startups and developing technical and creative specialties.

By its legal nature, a gig contract can be safely classified as a mixed contract, the dualistic nature of which is manifested in the combination of the rules of civil law in terms of ensuring the interests of the client and the "borrowed" rules of labor law regarding the protection of the interests of the natural person of the gig specialist. A gig contract is a unique form of relationship that contains both freelance elements and elements of social guarantees that are usually provided for by employment contracts.

A gig contract differs from an employment contract in greater flexibility of working conditions, the absence of a rigid schedule, and the ability to work with several contractors at the same time. At the same time, a gig specialist retains certain social guarantees but has a lower level of protection compared to an employee under an employment contract. The peculiarity of the gig contract can be seen in the possibility of working for several companies at the same time, a flexible schedule and the lack of attachment to a specific workplace; payment for the result of the work, not for the time worked; preservation of certain social guarantees (vacation, sick leave); simplified contract termination procedure.

Among the main requirements established by legislation for the conclusion of "gig contracts" in Ukraine are the following:

- the employer must have the status of "Diya City";
- an employee who will work under a gig contract will acquire the status of a "gig specialist";
- the minimum remuneration of a gig specialist must be no less than the equivalent of 1,200 euros at the official exchange rate of the hryvnia against the euro, established by the National Bank of Ukraine as of the first day of the relevant calendar month (Resolution of the Cabinet of Ministers of Ukraine No. 382 of March 29, 2022 cancels the requirement regarding the amount of the gig specialist's remuneration. That is, the gig specialist does not have to be paid a remuneration in the amount of at least the equivalent of 1,200 euros during the war);

- the term of validity of the gig contract, rights, obligations and responsibilities of the parties under the gig contract, terms of termination and other conditions can be determined by the parties in the gig contract itself at their own discretion;

- the time for the work of a gig specialist under a gig contract is established by Article 21 of the Law, in particular: the total number of working hours of a gig specialist cannot exceed 8 hours per day/ 40 hours per week. However, if necessary, it is possible to go beyond the established work regime in the gig contract under one of the following conditions: it is impossible to determine the exact time for performing work by a gig specialist; performance of work under a gig contract requires a high level of initiative, which involves periodic performance of overtime work without separate instructions from the employer (for example, if the gig specialist needs to urgently restore the site); the gig specialist has the right to independently plan his time to perform work under the gig contract.

Termination or termination of the gig contract timeframe is possible if the parties have agreed to such termination; the gig contract has expired and the parties do not wish to extend it; termination of the gig contract is provided for under certain conditions in the gig contract itself, for example, in case of non-fulfillment of its obligations by one of the parties; the employer lost the status of "Diya City".

Ukrainians and foreign citizens can work under a gig contract. Resident companies of Diya City can conclude ordinary labor contracts with employees in accordance with the norms of the Code of Labor Laws of Ukraine or civil law contracts with natural persons-entrepreneurs.

Law of Ukraine No. 1667-IX defines the following differences and similarities between a civil law contract with a FOP and a gig contract: 1) a gig contract with a specialist can be concluded only by a resident of Diya City, a legal entity that meets the following requirements: engages in the types of business activities established by Law of Ukraine No. 1667-IX; unites at least nine employees and gig specialists; the average monthly salary of employees/gig specialists is at least 1,200 euros; the amount of qualified income is at least 90% of the company's income; none of the negative criteria listed in p. 2 Art. 5 of the Law of Ukraine No. 1667-IX (for example, when the company is not registered in Ukraine, has not disclosed beneficial owners, its shares are directly or indirectly owned by citizens of aggressor countries, etc.). 2) Diya City residents are registered by the Ministry of Digital Transformation within 10 days of receiving the relevant application. 3) Unlike the, the gig specialist does not register with the tax office and does not report on the profits received. The tax agent of the Diya City resident specialist is the company that engaged him. 4) Compared to contracts with individual entrepreneurs, gig contracts contain more social guarantees for specialists. In particular, they regulate: time for tasks and rest; the possibility of non-standard time for the performance of work; length of break during the day; duration of weekly rest, paid and unpaid breaks in the performance of work on working days; the procedure for paying for days of such breaks in the performance of work; provisions on the annual paid break in the performance of works; temporary incapacity; mandatory state social insurance of a gig specialist and other social guarantees. 5) The amount of taxes for gig specialists and individual entrepreneurs does not differ.

Among the advantages of concluding a gig contract for IT specialists, we can highlight:

1) social protection: the gig contract provides for a number of social guarantees for the employee, such as vacations, assistance in case of temporary disability, etc. (annual paid leave for an employee who works under a gig contract is 17 working days and is granted after 6 months from the date of conclusion of such an agreement, maternity leave or sick leave is granted to a gig specialist in accordance with the general conditions established by current labor legislation);

2) a favorable tax burden (on gig specialists it does not differ from the system of taxation of the FOP: personal income tax — 5%, social security tax — 22% of the minimum wage (8,000 UAH as of January 1, 2025) and military duty — 5%). At the same time, the gig specialist does not need to additionally take care of administration, because the tax agent will be the company, which will carry out all the necessary procedures - calculation and payment of the employee's taxes to the budget, preparation of financial

statements, and others. The specialist's task is to perform the work stipulated by the gig contract in a timely and qualitative manner;

3) a gig contract is a fairly flexible tool, in which you can prescribe a whole range of various conditions, which the parties will agree on in advance. A gig contract allows an employee to be involved in various projects and independently determine the work schedule, which is especially important for IT specialists who can work from anywhere in the world where there is access to the Internet. Also, the legislation does not limit the employee's ability to combine work under an employment contract and a gig contract. Accordingly, an IT specialist has the opportunity to simultaneously work in one company under an employment contract and sign a gig contract with another employer [2];

4) another advantage of the gig contract is that the parties independently determine the amount of the reward and the procedure for its further payment. The size of the remuneration under the gig contract can be set (at the discretion of the parties) for a certain period, for example, paid monthly, or accrued upon completion of the project. Potentially higher level of income due to work on various projects.

5) a balance between the independence of a freelancer and the social guarantees of an employee.

Disadvantages of a gig contract include:

1) Less stability compared to a classic employment contract. 2) According to the confidentiality and/or non-competition agreement (NDA and NCA agreements), the gig worker undertakes not to disclose trade secrets and/or confidential information and must adhere to the standards defined in the company's internal documentation. 3) Lack of a guaranteed minimum income. 4) Limited social protection compared to an employment contract. 5) The need to independently plan workload and income. 6) Potential difficulties with obtaining bank loans due to unstable income. 7) Current legislation does not provide for reservation for gig specialists, so the company cannot demand "reservation" from the mobilization of its employees. 8) The gig contract entitles the employer to control the quality of work. That is, there is a risk of the employer interfering in the private life of the gig worker through video surveillance and/or the use of other information and communication systems.

The gig contract is a "know-how" in Ukrainian legislation, the introduction of which will stimulate the development of the digital economy, promote the involvement of employees and increase the efficiency of their work. Already today, it is obvious that the gig contract is a more flexible way of interaction than the labor and civil law contracts, which are regulated by legislation that is not relevant to modern realities.

The use of gig contracts in Ukraine has great potential for the development of the labor market, especially in such areas as IT, creative industries and startups. Gig contracts allow you to maintain flexibility in labor relations, giving employees the opportunity to independently choose projects, manage their working hours and workplace. This is especially important for highly qualified professionals who want to work at the international level, choose interesting projects and receive competitive incomes. On the other hand, for employers, gig contracts open up new opportunities to attract talent without the need to maintain a permanent staff, which allows to reduce labor costs and social guarantees. In addition, flexibility in the selection of personnel allows you to quickly respond to changes in the market and adapt to new technologies and needs.

However, it is important to note that for the effective development of the gig economy in Ukraine, it is necessary to ensure the legal protection of gig workers, create conditions for their social and medical security, as well as develop the infrastructure to support such labor relations. An important initiative in this context is the Diya.City project, which is designed to simplify legal and tax conditions for IT companies and freelancers, providing more stable conditions for work and investment attraction. Thus, gig contracts in Ukraine have great potential for the development of the labor market, but for the full realization of this potential, further adaptation of legal norms, creation of conditions for social protection of employees and support of innovative projects in various spheres of the economy are necessary.

REFERENCES

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